

Final Rule

LSA Document #12-46(F)

DIGEST

Amends [760 IAC 1-21-2](#) and [760 IAC 1-21-8.5](#) regarding the calculation and payment of annual surcharge for nursing homes and to otherwise implement [IC 34-18](#). Effective 30 days after filing with the Publisher.

[760 IAC 1-21-2](#); [760 IAC 1-21-8.5](#)

SECTION 1. [760 IAC 1-21-2](#) IS AMENDED TO READ AS FOLLOWS:

[760 IAC 1-21-2](#) Definitions

Authority: [IC 34-18-5-4](#)

Affected: [IC 12-15-18-3](#); [IC 12-24-1-1](#); [IC 12-24-1-3](#); [IC 12-25](#); [IC 16-28](#); [IC 25-14-1-1.5](#); [IC 25-14-1-3](#); [IC 25-22.5](#); [IC 25-29-1-13](#); [IC 34-18](#)

Sec. 2. The following definitions and those contained in [IC 34-18-2](#) apply throughout this rule:

- (1) "Ancillary provider" means all health care providers as defined in [IC 34-18-2-14](#), except the following:
 - (A) Physicians.
 - (B) Nursing homes.
 - (C) Hospitals.
 - (D) Psychiatric hospitals.
- (2) "Claims made coverage" means coverage for claims made during a coverage period.
- (3) "Comprehensive nursing care" means nursing that includes, but is not limited to, any of the following:
 - (A) Intravenous feedings.
 - (B) Enteral feeding.
 - (C) Nasopharyngeal and tracheostomy aspiration.
 - (D) Application of dressings to wounds that:
 - (i) require the use of sterile techniques, packing, or irrigation; or
 - (ii) are infected or otherwise complicated.
 - (E) Treatment of Stages 2, 3, and 4 pressure ulcers or other widespread skin disorders.
 - (F) Heat treatments that:
 - (i) have been specifically ordered by a physician as part of active treatment; and
 - (ii) require observation by nurses to adequately evaluate the process.
 - (G) Initial phases of a regimen involving administration of medical gases.
- (4) "Dentist" means any person with a license to practice dentistry under [IC 25-14-1-3](#) not meeting the definition for dentist - oral surgery set forth in subdivision (5).
- (5) "Dentist - oral surgery" means any person with a license to practice dentistry under [IC 25-14-1-3](#) treating patients with general anesthesia as defined by [IC 25-14-1-1.5](#) in an office setting.
- (6) "Department" means the Indiana department of insurance.
- (7) "Employed physician" means a physician for whom an employer:
 - (A) withholds and pays Social Security and Medicare taxes; and
 - (B) pays unemployment tax;on wages paid to the physician. The term does not include a physician that is treated as an independent contractor for purposes of the Internal Revenue Service.
- (8) "For-profit facility" means a nursing home not meeting the definition for not-for-profit facility as defined in subdivision (13).**
- ~~(8)~~ **(9) "Independent ancillary provider" means an ancillary provider that holds a state-issued license to provide health care and functions in an advanced role at a specialized level through the application of advanced knowledge and skills in the provision of health care. The term includes, but is not limited to, the following:**
 - (A) A dentist.
 - (B) A psychologist.
 - (C) A podiatrist.
 - (D) An optometrist.
 - (E) A nurse practitioner.
 - (F) A nurse midwife.

- (G) A certified registered nurse anesthetist.
- (H) A physician assistant.
- (I) A clinical nurse specialist.
- ~~(9)~~ **(10)** "Insurer" means any entity that issues a policy of insurance used as proof of financial responsibility under [IC 34-18](#) including, but not limited to, an insurance company doing business on an admitted or nonadmitted basis or a risk retention group.
- ~~(40)~~ **(11)** "IRMIA" means the Indiana residual malpractice insurance authority created by [IC 34-18-17](#).
- ~~(44)~~ **(12)** "Medical director" means a licensed physician whose duties primarily relate to oversight of the following:
 - (A) Program policies and procedures.
 - (B) Program development.
 - (C) Improvement of quality of care.
 - (D) Compliance.
 - (E) Supervision.
- (13)** "Not-for-profit facility" means a nursing home that is owned by a nonprofit corporation, governmental entity, or other organization that is exempt from federal income tax under Section 115 or 501, or both, of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any future United States Internal Revenue law.
- ~~(42)~~ **(14)** "Nurse midwife" means a certified nurse midwife as defined at [848 IAC 3-1-1](#).
- ~~(43)~~ **(15)** "Nursing home" means a facility named on the license issued by the state department of health under [IC 16-28](#).
- ~~(44)~~ **(16)** "Occurrence coverage" means coverage for acts that occur during a coverage period.
- ~~(45)~~ **(17)** "PCF" means the Indiana Patient's Compensation Fund.
- ~~(46)~~ **(18)** "PCF certificate of insurance" means the form prescribed by the department to show proof of financial responsibility as required by [IC 34-18-3-2](#)(1) to become a qualified provider.
- ~~(47)~~ **(19)** "Physician" means an individual with an unlimited license to practice medicine under [IC 25-22.5](#).
- ~~(48)~~ **(20)** "Podiatrist – no surgery" means any podiatrist, as defined by [IC 25-29-1-13](#), not meeting the definition for podiatrist – surgery set forth in subdivision ~~(49)~~: **(21)**.
- ~~(49)~~ **(21)** "Podiatrist – surgery" means a podiatrist, as defined by [IC 25-29-1-13](#), performing any procedure requiring an anesthetic, including a local anesthetic as defined by [845 IAC 1-1-1](#) or intravenous or gaseous sedation, including postoperative treatment. Exceptions to these procedures include the following:
 - (A) Diagnostic and therapeutic injections.
 - (B) Surgical procedures involving the nails.
 - (C) Excision of skin lesions.
 - (D) Incision and drainage of abscesses.
 - (E) The treatment of ulcers.
- The term includes podiatric physicians assisting in surgery.
- ~~(20)~~ **(22)** "Psychiatric hospital" means an inpatient facility that is a private institution licensed under [IC 12-25](#) and public institutions under the administrative control of the director of a division as designated by [IC 12-24-1-1](#) or [IC 12-24-1-3](#) and includes a private mental health institution, as defined by [440 IAC 1.5-1-8](#), and a private psychiatric institution, as defined by [IC 12-15-18-3](#).
- ~~(24)~~ **(23)** "Qualified actuary" means an individual that is a member in good standing with the Casualty Actuarial Society of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinion by the Casualty Practice Council of the American Academy of Actuaries.
- ~~(22)~~ **(24)** "Reporting endorsement" means coverage that extends the time a claim may be made beyond the final claims made policy period. A reporting endorsement is commonly referred to as tail coverage.
- ~~(23)~~ **(25)** "Residential nursing care" means nursing that includes, but is not limited to, any of the following:
 - (A) Identifying human responses to actual or potential health conditions.
 - (B) Deriving a nursing diagnosis.
 - (C) Executing a minor regimen based on a nursing diagnosis or executing minor regimens as prescribed by any of the following:
 - (i) A physician.
 - (ii) A physician assistant.
 - (iii) A chiropractor.
 - (iv) A dentist.
 - (v) An optometrist.
 - (vi) A podiatrist.
 - (vii) A nurse practitioner.
 - (viii) A clinical nurse specialist.

(Department of Insurance; Reg 22, Sec II; filed Jan 27, 1977, 2:35 p.m.: Rules and Regs. 1978, p. 514; filed Apr

29, 1999, 2:22 p.m.: 22 IR 2874; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; filed Mar 18, 2005, 10:45 a.m.: 28 IR 2375; filed Feb 2, 2007, 3:08 p.m.: [20070228-IR-760060032FRA](#); filed Apr 18, 2011, 11:34 a.m.: [20110518-IR-760100245FRA](#); filed May 29, 2012, 3:22 p.m.: [20120627-IR-760120046FRA](#))

SECTION 2. [760 IAC 1-21-8.5](#) IS AMENDED TO READ AS FOLLOWS:

[760 IAC 1-21-8.5](#) Payment into patient's compensation fund; annual surcharge for nursing homes

Authority: [IC 34-18-3-7](#); [IC 34-18-5-2](#); [IC 34-18-5-4](#); [IC 34-18-6-6](#)

Affected: [IC 34-18-5-2](#); [IC 34-18-5-3](#)

Sec. 8.5. A nursing home shall calculate their surcharge rate on a form prescribed by the department. The calculation shall include the following:

- (1) The actual number and type of beds licensed by the state department of health.
- (2) A per bed charge **for for-profit facilities** as follows:
 - ~~(A) One hundred thirty-six dollars and twenty-eight cents (\$136.28) for each comprehensive nursing care bed.~~
 - ~~(B) Sixty-three dollars and ten cents (\$63.10) for each residential nursing care bed.~~
 - (A) Ninety-three dollars and two cents (\$93.02) for each comprehensive nursing care bed.**
 - (B) Forty-two dollars and ninety-three cents (\$42.93) for each residential nursing care bed.**
- (3) A per bed charge **for not-for-profit facilities** as follows:
 - (A) Seventy-seven dollars and fifty-two cents (\$77.52) for each comprehensive nursing care bed.**
 - (B) Thirty-five dollars and seventy-eight cents (\$35.78) for each residential nursing care bed.**
- ~~(3) (4)~~ (4) A charge for each employed physician covered by the nursing home.

(Department of Insurance; [760 IAC 1-21-8.5](#); filed Feb 2, 2007, 3:08 p.m.: [20070228-IR-760060032FRA](#); filed Apr 18, 2011, 11:34 a.m.: [20110518-IR-760100245FRA](#); filed May 29, 2012, 3:22 p.m.: [20120627-IR-760120046FRA](#))

LSA Document #12-46(F)

Notice of Intent: [20120118-IR-760120046NIA](#)

Proposed Rule: [20120229-IR-760120046PRA](#)

Hearing Held: March 22, 2012

Approved by Attorney General: May 22, 2012

Approved by Governor: May 29, 2012

Filed with Publisher: May 29, 2012, 3:22 p.m.

Documents Incorporated by Reference: None Received by Publisher

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Posted: 06/27/2012 by Legislative Services Agency

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